

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES**

In Re Application of:	)	Confirmation No.: 8940
	)	
Richard Schuster	)	Art Unit: 3782
	)	
Serial No.: 10/575,997	)	Examiner: Gary E. Elkins
	)	
Filed: April 17, 2006	)	
	)	
For: HANDLE AND TOP HANDLE	)	
REINFORCEMENT FOR A	)	
PAPERBOARD CARTON	)	

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**APPEAL BRIEF**

Sir:

This Appeal Brief is filed pursuant to 37 CFR 41.37, a Notice of Appeal having been filed on November 9, 2009.

**I. REAL PARTY IN INTEREST**

The real party in interest is the assignee, Graphic Packaging International, Inc.

**II. RELATED APPEALS AND INTERFERENCES**

The present application is a 371 of PCT/US04/33760, which is a Continuation-In-Part of U.S. Patent Application No. 10/693,210 (hereinafter "the '210 Application") (now U.S. Patent No. 6,968,992). U.S. Patent Application No. 11/200,803, which is also currently under appeal, is a continuation of the '210 Application.

### **III. STATUS OF CLAIMS**

Claims 4, 5, 7-20, 36-39, and 41-46 are pending. Claims 1-3, 6, 21-35, and 40 are canceled. The final rejection of claims 4, 5, 7-20, 36-39, and 41-46 dated May 12, 2009 is being appealed.

### **IV. STATUS OF AMENDMENTS**

None.

### **V. SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claims 4, 5, and 36 read on the specification and drawings of the application as follows:

<b>Claim</b>	<b>Disclosure of S.N. 10/575,997</b>
<p>4. A paperboard carton with a first end and a second end for carrying a plurality of containers, the carton comprising:</p> <p>(a) a bottom panel, top panel, a first side panel attached to the top panel by a first fold line, and a second side panel attached to the top panel by a second fold line, the first end of the carton being closed by a first top end flap attached to the top panel along a first top end fold line, a first side end flap foldably attached to the first side panel, a second side end flap foldably attached to the second side panel, a first bottom end flap foldably attached to the bottom panel, with means for securing the first top end flap, the first side end flap, the second side end flap, and the first bottom end flap at the first end of the carton in the closed position, the second end of the carton being closed by a second top end flap attached to the top panel by a second top end fold line, a third side end flap foldably attached to the first side panel, a fourth side end flap foldably attached to the second side panel, a second bottom end flap foldably attached to the bottom panel, with means for</p>	<p>Another embodiment of this invention is illustrated in the blank and insert shown in FIG. 4. <b>The blank 110 is formed from a foldable sheet of material, such as paperboard. The blank has a side panel 112 which is connected to top panel 114 by fold line 116 and in turn connected to side panel 118 by fold line 120 and to bottom panel 122 by fold line 124 and to glue flap 126 by fold line 128. Side end flaps 130 and 134 are connected to side panel 112 by fold lines 132 and 136, respectively. Top end flaps 138 and 140 are connected to top panel 114 by fold lines 132 and 136, respectively. Side end flaps 142 and 144 and bottom end flaps 146 and 148 are connected to side panel 118 and bottom panel 122 by fold lines 132 and 136, respectively.</b> (page 8, lines 17-26; FIG. 4).<sup>1</sup></p> <p><b>The carton sleeve is loaded with bottles and closed by gluing the end flaps together on both ends of the carton. Using one end as an example, side end flaps 130 and 142 are folded inwardly and top end flap 138 and bottom end flap 146 are folded and glued to</b></p>

<sup>1</sup> The citations are to the specification of the application as filed.

Claim	Disclosure of S.N. 10/575,997
securing the second top end flap, the third side end flap, the fourth side end flap, and the second bottom end flap at the second end of the carton in the closed position;	<b>side end flaps 130 and 142. Apertures 184 along fold lines 182A and B facilitate the folding of fold lines 182A and B of the insert 158 without the bunching of the paperboard. It is preferred that these end flaps be closed and secured in position by gluing, but other methods such as stapling may be used. (page 10, lines 11-17).</b>
(b) said carton having a first handle aperture in the first top end flap and a second handle aperture in the second top end flap for carrying the carton when loaded with containers with the carton secured in the closed position,	<b>Top end flaps 138 and 140 have handle apertures 150A and 150B with handle flaps 152A and 152B which are attached to top end flaps 138 and 140 by fold lines 154A and B. (page 8, lines 26-28).</b>
the first side end flap having a first side end aperture sufficiently aligned with the first handle aperture in said first top end flap so that a person's hand can be extended through the first handle aperture in said first top end flap and said first side end aperture in the first side end flap and the carton being defined with the third side end flap having a third side end aperture sufficiently aligned with the second handle aperture in said second top end flap so that a person's hand can be extended through the second handle aperture in said second top end flap and the third side end aperture in the second side end flap; and	<b>Side end flaps 130, 134, 142, and 144 have apertures 156A-D corresponding to handle apertures 150A and B. (page 8, lines 29-30).</b>
(c) said carton having a paperboard insert which is secured to at least one of the first top end flap and the first side end flap on the first end of the carton and which is secured to at least one of the second top end flap and the third side end flap on the second end of the carton, said insert having a first insert aperture that is sufficiently aligned with the first handle aperture in said first top end flap and the first side end aperture in said first side end flap so that a person's hand can be inserted through the first handle aperture, the first side end aperture, and the first insert aperture when the carton is secured in the closed position and having a second insert aperture that is sufficiently aligned with the	<p><b>A paperboard Insert 158 illustrated in FIG. 4 is in position for inserting and securing to the blank 110. The insert 158 has insert apertures 160A and B. The insert 158 has an edge 162 that is also shown in a phantom line in its proper location secured to top panel 114 and top end flaps 138 and 140.</b></p> <p><b>The handle apertures 150A and B have cut lines 164A and B defining the aperture. The insert 158 also has a cut line 166A and B, which is shown as phantom cut lines 168A and B when the insert 158 is properly positioned on the blank 110. (page 8, line 31 through page 9, line 3).</b></p>

Claim	Disclosure of S.N. 10/575,997
second handle aperture in said second top end flap and the third side end aperture in said second side end flap so that a person's hand can be inserted through the second handle aperture, the third side end aperture, and the second insert aperture when the carton is secured in the closed position,	
said paperboard insert and said first side end flap reinforcing the first top end flap to form three layers of paperboard between the first top end fold line and the first handle aperture and said paperboard insert and said third side end flap reinforcing the second top end flap to form three layers of paperboard between the second top end fold line and the second handle aperture, to preserve the integrity of said first handle aperture and said second handle aperture, respectively, when the carton is loaded with the plurality of containers;	<b>When the paperboard insert is attached to the top end flap, preferable by glue, and the ends of the carton are closed there are at least three layers of paperboard to prevent the handle aperture in the top end flap from tearing when carrying a heavy load of containers by a handle aperture in one top end flap or a handle aperture in both top end flaps. (page 3, lines 21-26).</b>
wherein the insert is secured by securing means to the first side end flap on the first end of the carton and to the third side end flap on the second end of the carton.	<b>The carton sleeve is loaded with bottles and closed by gluing the end flaps together on both ends of the carton. Using one end as an example, side end flaps 130 and 142 are folded inwardly and top end flap 138 and bottom end flap 146 are folded and glued to side end flaps 130 and 142. Apertures 184 along fold lines 182A and B facilitate the folding of fold lines 182A and B of the insert 158 without the bunching of the paperboard. It is preferred that these end flaps be closed and secured in position by gluing, but other methods such as stapling may be used. (page 10, lines 11-17).</b>
5. A paperboard carton with a first end and a second end for carrying a plurality of containers, the carton comprising: (a) a bottom panel, top panel, a first side panel attached to the top panel by a first fold line, and a second side panel attached to the top panel by a second fold line, the first end of the carton being closed by a first top end flap attached to the top panel along a first top end fold line, a first side end flap foldably	Another embodiment of this invention is illustrated in the blank and insert shown in FIG. 4. <b>The blank 110 is formed from a foldable sheet of material, such as paperboard. The blank has a side panel 112 which is connected to top panel 114 by fold line 116 and in turn connected to side panel 118 by fold line 120 and to bottom panel 122 by fold line 124 and to glue flap 126 by fold line 128. Side end flaps 130 and 134 are connected to side panel</b>

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<p>attached to the first side panel, a second side end flap foldably attached to the second side panel, a first bottom end flap foldably attached to the bottom panel, with means for securing the first top end flap, the first side end flap, the second side end flap, and the first bottom end flap at the first end of the carton in the closed position, the second end of the carton being closed by a second top end flap attached to the top panel by a second top end fold line, a third side end flap foldably attached to the first side panel, a fourth side end flap foldably attached to the second side panel, a second bottom end flap foldably attached to the bottom panel, with means for securing the second top end flap, the third side end flap, the fourth side end flap, and the second bottom end flap at the second end of the carton in the closed position;</p>	<p>112 by fold lines 132 and 136, respectively. Top end flaps 138 and 140 are connected to top panel 114 by fold lines 132 and 136, respectively. Side end flaps 142 and 144 and bottom end flaps 146 and 148 are connected to side panel 118 and bottom panel 122 by fold lines 132 and 136, respectively. (page 8, lines 17-26; FIG. 4).</p> <p>The carton sleeve is loaded with bottles and closed by gluing the end flaps together on both ends of the carton. Using one end as an example, side end flaps 130 and 142 are folded inwardly and top end flap 138 and bottom end flap 146 are folded and glued to side end flaps 130 and 142. Apertures 184 along fold lines 182A and B facilitate the folding of fold lines 182A and B of the insert 158 without the bunching of the paperboard. It is preferred that these end flaps be closed and secured in position by gluing, but other methods such as stapling may be used. (page 10, lines 11-17).</p>
<p>(b) said carton having a first handle aperture in the first top end flap and a second handle aperture in the second top end flap for carrying the carton when loaded with containers with the carton secured in the closed position,</p>	<p>Top end flaps 138 and 140 have handle apertures 150A and 150B with handle flaps 152A and 152B which are attached to top end flaps 138 and 140 by fold lines 154A and B. (page 8, lines 26-28).</p>
<p>the first side end flap having a first side end aperture sufficiently aligned with the first handle aperture in said first top end flap so that a person's hand can be extended through the first handle aperture in said first top end flap and said first side end aperture in the first side end flap and the carton being defined with the third side end flap having a third side end aperture sufficiently aligned with the second handle aperture in said second top end flap so that a person's hand can be extended through the second handle aperture in said second top end flap and the third side end aperture in the second side end flap; and</p>	<p>Side end flaps 130, 134, 142, and 144 have apertures 156A-D corresponding to handle apertures 150A and B. (page 8, lines 29-30).</p>
<p>(c) said carton having a paperboard insert</p>	<p>A paperboard insert 158 illustrated in FIG. 4</p>

Claim	Disclosure of S.N. 10/575,997
<p>which is secured to the first top end flap and the first side end flap on the first end of the carton and which is secured to the second top end flap and the third side end flap on the second end of the carton, said insert having a first insert aperture that is sufficiently aligned with the first handle aperture in said first top end flap and the first side end aperture in said first side end flap so that a person's hand can be inserted through the first handle aperture, the first side end aperture, and the first insert aperture when the carton is secured in the closed position and having a second insert aperture that is sufficiently aligned with the second handle aperture in said top end flap and the third side end aperture in said second side end flap so that a person's hand can be inserted through the second handle aperture, the third side end aperture, and the second insert aperture when the carton is secured in the closed position,</p>	<p><b>is in position for inserting and securing to the blank 110. The insert 158 has insert apertures 160A and B. The insert 158 has an edge 162 that is also shown in a phantom line in its proper location secured to top panel 114 and top end flaps 138 and 140.</b></p> <p><b>The handle apertures 150A and B have cut lines 164A and B defining the aperture. The insert 158 also has a cut line 166A and B, which is shown as phantom cut lines 168A and B when the insert 158 is properly positioned on the blank 110. (page 8, line 31 through page 9, line 3).</b></p>
<p>said paperboard insert and said first side end flap reinforcing the first top end flap to form three layers of paperboard between the first top end fold line and the first handle aperture and said paperboard insert and said third side end flap reinforcing the second top end flap to form three layers of paperboard between the second top end fold line and the second handle aperture, to preserve the integrity of said first handle aperture and said second handle aperture, respectively, when the carton is loaded with the plurality of containers;</p>	<p><b>When the paperboard insert is attached to the top end flap, preferable by glue, and the ends of the carton are closed there are at least three layers of paperboard to prevent the handle aperture in the top end flap from tearing when carrying a heavy load of containers by a handle aperture in one top end flap or a handle aperture in both top end flaps. (page 3, lines 21-26).</b></p>
<p>wherein the paperboard insert is secured by securing means to the first top end flap and to the second top end flap.</p>	<p><b>The carton sleeve is loaded with bottles and closed by gluing the end flaps together on both ends of the carton. Using one end as an example, side end flaps 130 and 142 are folded inwardly and top end flap 138 and bottom end flap 146 are folded and glued to side end flaps 130 and 142. Apertures 184 along fold lines 182A and B facilitate the folding of fold lines 182A and B of the insert 158 without the bunching of the paperboard. It is preferred that these end flaps be closed</b></p>

Claim	Disclosure of S.N. 10/575,997 and secured in position by gluing, but other methods such as stapling may be used. (page 10, lines 11-17).
<p>36. A paperboard carton with a first end and a second end for carrying a plurality of containers, the carton comprising:</p> <p>(a) a bottom panel, top panel, a first side panel attached to the top panel by a first fold line, and a second side panel attached to the top panel by a second fold line, the first end of the carton being closed by a first top end flap attached to the top panel along a first top end fold line, a first side end flap foldably attached to the first side panel, a second side end flap foldably attached to the second side panel, a first bottom end flap foldably attached to the bottom panel, with means for securing the first top end flap, the first side end flap, the second side end flap, and the first bottom end flap at the first end of the carton in the closed position, the second end of the carton being closed by a second top end flap attached to the top panel by a second top end fold line, a third side end flap foldably attached to the first side panel, a fourth side end flap foldably attached to the second side panel, a second bottom end flap foldably attached to the bottom panel, with means for securing the second top end flap, the third side end flap, the fourth side end flap, and the second bottom end flap at the second end of the carton in the closed position;</p>	<p><b>As illustrated in FIG. 1</b>, the blank 10 is formed from a foldable sheet of material, such as paperboard. <b>The blank 10 has a side panel 12 which is connected to a top panel 14 by fold line 16 and in turn connected to side panel 18 by fold line 20, and in turn connected to bottom panel 22 by fold line 24. The bottom panel 22 is connected to glue flap 26 by fold line 28. Side end flaps 30 and 34 are connected to side panel 12 by fold lines 32 and 36, respectively. Top end flaps 38 and 40 are connected to top panel 14 by fold lines 32 and 36. Side end flaps 42 and 44 are connected to side panel 18 by fold lines 32 and 36, respectively. Bottom end flaps 46 and 48 are connected to bottom panel 22 by fold lines 32 and 36, respectively.</b> (page 6, lines 11-19; FIG. 1).</p>
<p>(b) said carton having a first handle aperture in the first top end flap and a second handle aperture in the second top end flap for carrying the carton when loaded with containers with the carton secured in the closed position,</p>	<p><b>Top end flaps 38 and 40 have handle apertures 50A and 50B, respectively.</b> (page 6, line 20).</p>
<p>the first side end flap having a first side end aperture sufficiently aligned with the first handle aperture in said first top end flap so that a person's hand can be extended through the first handle aperture in said first top end</p>	<p><b>Side end flaps 30, 34, 42 and 44 may have apertures 56A-D corresponding to the respective handle aperture 50A and B.</b> (page 6, lines 22-24).</p>

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<p>flap and said first side end aperture in the first side end flap and the carton being defined with the third side end flap having a third side end aperture sufficiently aligned with the second handle aperture in said second top end flap so that a person's hand can be extended through the second handle aperture in said second top end flap and the third side end aperture in the second side end flap; and</p>	
<p>(c) said carton having a first paperboard insert and a second paperboard insert, the first paperboard insert being secured to at least one of the (i) first top end flap and (ii) the first side end flap and the second paperboard insert being secured to at least one of the (i) second top end flap and (ii) the third side end flap; the first end having a first handle aperture in said first top end flap and the second end of the carton having a second handle aperture in said second top end flap, said first paperboard insert having a first insert aperture that is sufficiently aligned with the first handle aperture in said first top end flap and the first side end aperture in said first side end flap so that a person's hand can be inserted through the first handle aperture, the first side end aperture, and the first insert aperture when the carton is secured in the closed position and the second paperboard insert having a second insert aperture that is sufficiently aligned with the second handle aperture in said second top end flap and the third side end aperture in said second side end flap so that a person's hand can be inserted through the second handle aperture, the second side end aperture, and the third insert aperture when the carton is secured in the closed position,</p>	<p><b>A paperboard insert 58A and B, each with an insert aperture 60A and B, is shown in position prior to placement on the blank 10. (page 6, lines 25-26).</b></p> <p><b>The carton filled with bottles can be easily carried by a person whose hands are inserted into handle apertures 50A and B and corresponding insert apertures 60A and B and apertures 56A-D so the carton can be easily carried. The inclusion of inserts 58A and B permits this carton loaded with heavy bottles to be easily carried without any tearing occurring along the handle aperture cut lines 64A and B or fold lines 54A and B. (page 7, line 23-28).</b></p> <p><b>As people sometimes carry these loaded cartons by one hand, the inserts 58A and B may need to be strong enough to reinforce the handle apertures 50A and B so that this can be done without tearing the carton. (page 7, line 34 through page 8, line 2).</b></p>
<p>said first paperboard insert and said first side end flap reinforcing the first top end flap to form three layers of paperboard between the first top end fold line and the first handle aperture and the second paperboard insert and said third side end flap reinforcing the second top end flap to form three layers of</p>	<p><b>When the paperboard insert is attached to the top end flap, preferable by glue, and the ends of the carton are closed there are at least three layers of paperboard to prevent the handle aperture in the top end flap from tearing when carrying a heavy load of containers by a handle aperture in one top</b></p>



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paperboard between the second top end fold line and the second handle aperture to preserve the integrity of said first handle aperture and said second handle aperture, respectively, when the carton is loaded with the plurality of containers.	<b>end flap or a handle aperture in both top end flaps.</b> (page 3, lines 21-26; FIG. 3).

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

- Whether claims 4, 5, 7, 8, 12-15, 36-39, 41, 42, and 46 are unpatentable over *Brown* (U.S. Patent No. 5,350,109) in view of *Wilson* (U.S. Patent No. 5,072,876), either *Reeser* (U.S. Patent No. 2,568,204) or *Negelen* (U.S. Patent No. 6,250,542), and either *Sutherland* (U.S. Patent No. 6,112, 977) or *Skolik* (U.S. Patent No. 6,170,741), under 35 U.S.C. § 103(a);
- Whether claims 36-39, 41, and 42 are unpatentable over *Brown* in view of *Wilson*, either *Reeser* or *Negelen*, and *JP '243* (Japan 47-7243), under 35 U.S.C. § 103(a);
- Whether claims 9, 16, and 43 are unpatentable over the prior art as applied to claims 8, 15, and 42, respectively, and further in view of *Sherman* (U.S. Patent No. 3,166,229), under 35 U.S.C. § 103(a); and
- Whether claims 10, 11, 17-20, and 44-45 are unpatentable over the prior art as applied to claims 9, 16, and 43, and further in view of *Gilchrist* (U.S. Patent No. 3,533,549), under 35 U.S.C. § 103(a).

## **VII. ARGUMENT**

This appeal is from the final rejection dated April 29, 2009. Quite simply, the Office Action fails to address how an insert could be added to *Brown* without destroying *Brown*'s intended functionality. An insert added to *Brown* would have to include score lines aligned with interior layer and exterior layer score lines to allow the handle of *Brown* to concertina as *Brown* intends. Such score lines in an insert are not shown in the cited references. The Examiner's

reasoning not only fails to support the proposed combinations (no insert cited provides an insert with score lines, but they also fail to teach how adding an insert to *Brown* would allow his handle to function as intended). Accordingly, the rejections lack support and should be withdrawn.

1. **The rejections of claims 4, 5, 7, 8, 12-15, 36-39, 41, 42, and 46 as being unpatentable over *Brown* (U.S. Patent No. 5,350,109) in view of *Wilson* (U.S. Patent No. 5,072,876), either *Reeser* (U.S. Patent No. 2,568,204) or *Negelen* (U.S. Patent No. 6,250,542), and either *Sutherland* (U.S. Patent No. 6,112, 977) or *Skolik* (U.S. Patent No. 6,170,741), under 35 U.S.C. § 103(a) should be withdrawn.**

The fundamental flaw in the Examiner's position is that there is simply no motivation to modify *Brown* as proposed. Further, even if somehow such motivation were found to exist (it doesn't), then, if the references were combined as proposed, the resulting structure still would not meet or suggest all the limitations of the appealed claims. In particular, the combined references lack a teaching or suggestion to provide an insert between the interior and exterior layers of *Brown* that would allow collapse of the handholds as intended by *Brown*.

The Final Rejections based on *Brown*, *Wilson*, *Reeser* or *Negelen*, and *Sutherland* or *Skolik* under 35 U.S.C. § 103(a) should be withdrawn for at least the following three reasons:

- A. A prima facie case of obviousness has not been established.
- B. *Brown* cannot be modified as proposed.
- C. No motivation exists to combine the art as proposed.

**A. A Prima Facie Case of Obviousness has not been established:**

As Applicants continue to aver, *Brown* cannot be modified as proposed since adding an insert would not have been obvious absent a teaching that the added insert would collapse in a concertina manner in coordination with the panels surrounding the handle of *Brown* as intended. A prima facie case of obviousness has still not been established since neither *Reeser* nor *Negelen*, nor any other cited reference, provides a reason to add an insert to *Brown* (*Brown* would not need another panel/insert to add strength since the concertina folding action of *Brown*'s handhold

provides the necessary strength, see column 2, lines 5-12 and column 7, lines 22-34) or a teaching of how the insert would collapse in coordination with the panels surrounding the handle intended by *Brown*. Absent such teaching, the rejections based on modification of *Brown* are improper and should be withdrawn.

Although the Examiner provided several reasons he alleges support the proposed combination of references, the Examiner has continued to fail to address the fact that *Brown* itself cannot be modified as proposed by adding an insert. A prima facie case of obviousness cannot be supported where the proposed modification would change the principle of operation of a reference (MPEP 2143.01(V)). Since adding an insert would impair the concertina folding of the handhold and would not allow the handhold of *Brown* to function as intended (i.e. to fold in a concertina fashion), the proposed combination would not have been made by a person of ordinary skill in the art. Since the Applicants timely traversed the proposed combination, the burden then shifted to the Examiner to provide support for the proposed combination. However, the only statements addressing the Applicants' traversal based on the improper modification of *Brown* as proposed was in the Advisory Action dated October 19, 2009, which stated:

[T]he remarks are not persuasive. The argument that the construction of *Brown* could not be modified as suggested by the prior art is not considered valid insofar as modification to either eliminate the handle flaps or modify the handhole to use a different flap construction would have been obvious to one skilled in this art in view of the teachings of the prior art. This is not considered to destroy the *Brown* reference insofar as the handle can still be used to carry the container regardless of the specific flap structure used.

The rejections fail to provide a prima facie case of obviousness. Specifically, reason 2 at page 5 of the Final Office Action states:

The prior art to Wilson (as well as several other secondary references) suggests that formation of handle openings without folded flaps is knowledge that is clearly present within the art. It is believed that elimination of the part and its function, if

not needed, is within the level of skill in this art. One of ordinary skill in this art would not have been led away from the combination as a result of whether the handle flaps of Brown et al were to be used or not. The box of Brown et al is useful to package contents and to be carried using the handle flaps regardless of whether the additional advantage of the handle flaps is present or not. Obviousness is a determination of whether the claimed invention would have been obvious to one of ordinary skill in this art having knowledge of all the prior art as opposed to the inventors in the Brown et al reference.

However, the Final Office Action oversimplifies obviousness, which is presented in MPEP 2143:

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

In the present application, the final rejections fail at least the first two criteria: (1) the cited art and the general knowledge in the art fails to provide a suggestion or motivation to modify the base reference (*Brown*) and (2) there is no reasonable expectation of success since *Brown* cannot be modified as proposed without rendering the carton of *Brown* unsatisfactory for its intended purpose. Absent these suggestions, the combinations proposed by the Examiner fail to support a prima facie case of obviousness and rejections based thereupon should be withdrawn.

**B. *Brown* Cannot Be Modified As Proposed:**

The Abstract of *Brown* details a two layer paperboard carton with “an incipient handhold that is adapted to partially break away from surrounding portions of a carton wall, and to sequentially collapse in a predetermined reverse folding or “concertina” fashion, to provide a folded load-bearing handhold structure.” To achieve such folding, *Brown* provides exterior and interior flaps that are “arranged in mutually co-operable register with the respective interior layer

and exterior layer score lines positioned parallel and adjacent to one another in cooperative lower hinge-forming relation.” However, *Brown* fails to provide a reinforcing insert whatsoever, and specifically an insert with score lines arranged to cooperate with corresponding score lines in the interior and exterior layers that would allow the handholds to collapse as intended by *Brown*. In fact, it appears that providing an insert panel would interfere with the function/operation of the buckling intended in *Brown*. The Examiner continues to base his rejections on *Brown*, but has added one of two additional references (*Reeser* or *Negelen*) to this rejection and asserts that the additional reference “teaches the desirability of making handle apertures in the sides of a container using three plies” (page 2 of the Final Office Action). However, none of the inserts or flaps of *Brown*, *Reeser*, *Negelen*, *Wilson*, *Sutherland*, or *Skolik* provide score lines therein, and none of these cited references provide insert score lines that are aligned with inner and outer carton layer score lines as would be required in any insert added to the carton of *Brown* (Although the Examiner in one instance references *Wilson* as providing “foldlines in the insert using perforations,” since *Wilson* does not appear to support this reference such reference appears to be improper). Absent a teaching or suggestion to provide score lines in the insert, modifying *Brown* by adding an insert as proposed by the Examiner would not allow the handles of *Brown* to concertina as intended, and would, in fact, interfere with the operation of the *Brown* concertina action. Further, even if score lines were provided by a reference, a teaching or suggestion to align or register such insert score lines with the interior and exterior layers is not provided in *Brown* or the other cited references. Thus, since modifying *Brown* as proposed by the Examiner would render *Brown* unsatisfactory for its intended purpose (providing a breakaway handhold), the combinations could not, and would not, be made as proposed. (See MPEP 2143.01(v)).

**C. No motivation exists to combine the art as proposed.**

A person of ordinary skill in the art viewing *Brown*, or even viewing all the cited art as a whole as appears to be the basis of the obviousness rejections by the Examiner, would not be motivated to modify *Brown* to reach the claimed invention without using the present disclosure as motivation, which would be impermissible hindsight. The cited references entirely fail to provide a teaching or suggestion to provide a carton or blank as claimed, i.e. with three layers of paperboard between the first top fold line and the first handle aperture and an insert in alignment with the handle aperture. *Brown*, *Wilson*, *Reeser*, *Negelen*, *Sutherland*, and *Skolik* provide cartons with specific features. None of these references suggesting modification of the specific carton features or motivation to combine such disparate teachings to reach the claimed invention. The Examiner's only statements in this regard are at pages 2-3 of the Final Office Action:

It would have been obvious to provide reinforcement to the end wall handle apertures in *Brown et al* with an insert or inserts as taught by *Wilson* and to form the insert or inserts as a separate blank as taught by either *Sutherland et al* or *Skolik et al* as a matter of combining the elements according to known methods to yield the predictable results. See *KSR Int'l Col. V. Teleflex Inc.*, 127 S.Ct. 1727, 1742; 82 USPQ2d 1385, 1396 (2007). It would further have been obvious to maintain the partial handle apertures in the end panel flaps 25 and 27 in modified *Brown et al* in view of the teaching in either *Negelen* or *Reeser* as a way of forming a three ply handle structure to reinforce the handle.

However, there is no "known method" for forming a three-ply handle in the *Brown* structure. Since *Brown* cannot be modified as proposed without destroying the functionality intended, the Examiner's reasoning that the elements would be combined "according to known methods to yield the predictable results" lacks support in *Brown* as such modification is not predictable, as discussed above, and does not yield predictable results. Thus, the Examiner continues to fail to make a prima facie case of obviousness and rejections based upon such proposed combinations

should be withdrawn. Accordingly, the rejections of claims 4, 5, 7, 8, 12-15, 36-39, 41, 42, and 46 should be withdrawn.

2. **The rejections of claims 36-39, 41, and 42 as being unpatentable over *Brown* in view of *Wilson*, either *Reeser* or *Negelen*, and JP '243 (Japan 47-7243), under 35 U.S.C. § 103(a) should be withdrawn.**

As stated above, the fundamental flaw in the Examiner's position is that there is simply no motivation to modify *Brown* as proposed. Further, even if somehow such motivation were found to exist (it doesn't), then, if the references were combined as proposed, the resulting structure still would not meet or suggest all the limitations of the appealed claims. In particular, the combined references lack a teaching or suggestion to provide an insert between the interior and exterior layers of *Brown* that would allow collapse of the handholds as intended by *Brown*.

The Final Rejections based on *Brown*, *Wilson*, *Reeser* or *Negelen*, and JP '243 under 35 U.S.C. § 103(a) should be withdrawn for at least the following three reasons:

- A. A prima facie case of obviousness has not been established.
  - B. *Brown* cannot be modified as proposed.
  - C. No motivation exists to combine the art as proposed.
- A. **A Prima Facie Case of Obviousness has not been established:**

As Applicants continue to aver, *Brown* cannot be modified as proposed since adding an insert would not have been obvious absent a teaching that the added insert would collapse in a concertina manner in coordination with the panels surrounding the handle of *Brown* as intended. A prima facie case of obviousness has still not been established since neither *Reeser* nor *Negelen*, nor any other cited reference, provides a reason to add an insert to *Brown* (*Brown* would not need another panel/insert to add strength since the concertina folding action of *Brown*'s handhold provides the necessary strength, see column 2, lines 5-12 and column 7, lines 22-34) or a teaching of how the insert would collapse in coordination with the panels surrounding the handle

intended by *Brown*. Absent such teaching, the rejections based on modification of *Brown* are improper and should be withdrawn.

Although the Examiner provided several reasons to support the proposed combination of references, the Examiner has continued to fail to address the fact that *Brown* cannot be modified as proposed by adding an interior layer as claimed. A prima facie case of obviousness cannot be supported where the proposed modification would change the principle of operation of a reference (MPEP 2143.01(V)). Since adding an interior layer would not allow the handhold of *Brown* to function as intended (i.e. to fold in a concertina fashion), Applicants have continue to aver that the proposed combination would not have been made by a person of ordinary skill in the art. The burden then shifted to the Examiner to provide support for the proposed combination. However, the Examiner has only stated that such modification would have been obvious by stating in the Advisory Action dated October 19, 2009 that:

[T]he remarks are not persuasive. The argument that the construction of *Brown* could not be modified as suggested by the prior art is not considered valid insofar as modification to either eliminate the handle flaps or modify the handhole to use a different flap construction would have been obvious to one skilled in this art in view of the teachings of the prior art. This is not considered to destroy the *Brown* reference insofar as the handle can still be used to carry the container regardless of the specific flap structure used.

The rejections fail to provide a prima facie case of obviousness. Specifically, reason 2 at page 5 of the Final Office Action states:

The prior art to Wilson (as well as several other secondary references) suggests that formation of handle openings without folded flaps is knowledge that is clearly present within the art. It is believed that elimination of the part and its function, if not needed, is within the level of skill in this art. One of ordinary skill in this art would not have been led away from the combination as a result of whether the handle flaps of *Brown et al* were to be used or not. The box of *Brown et al* is useful to package contents and to be carried using the handle flaps regardless of whether the additional advantage of the handle flaps is present or not. Obviousness is a determination of whether the claimed invention would have been



obvious to one of ordinary skill in this art having knowledge of all the prior art as opposed to the inventors in the *Brown et al* reference.

However, the standard presented in the Final Office Action oversimplifies obviousness, which is presented in MPEP 2143 as:

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaack, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

In the present application, the final rejections fail at least the first two criteria: (1) the cited art and the general knowledge in the art fails to provide a suggestion or motivation to modify the base reference (*Brown*) and (2) there is no reasonable expectation of success since *Brown* cannot be modified as proposed without rendering the carton of *Brown* unsatisfactory for its intended purpose. Absent these suggestions, the combinations proposed by the Examiner fail to support a prima facie case of obviousness and rejections based thereupon should be withdrawn.

**B. *Brown* Cannot Be Modified As Proposed:**

The Abstract of *Brown* details a two layer paperboard carton with “an incipient handhold that is adapted to partially break away from surrounding portions of a carton wall, and to sequentially collapse in a predetermined reverse folding or “concertina” fashion, to provide a folded load-bearing handhold structure.” To achieve such folding, *Brown* provides exterior and interior flaps that are “arranged in mutually co-operable register with the respective interior layer and exterior layer score lines positioned parallel and adjacent to one another in cooperative lower hinge-forming relation.” However, *Brown* fails to provide a reinforcing insert whatsoever, and

specifically an insert with score lines arranged to cooperate with corresponding score lines in the interior and exterior layers that would allow the handholds to collapse as intended by *Brown*. In fact, it appears that providing an insert panel would interfere with the function/operation of the buckling intended in *Brown*. The Examiner continues to base his rejections on *Brown*, but has added one of two additional references (*Reeser* or *Negelen*) to this rejection and asserts that the additional reference “teaches the desirability of making handle apertures in the sides of a container using three plies” (page 2 of the Final Office Action). However, none of the inserts or flaps of *Brown*, *Reeser*, *Negelen*, *Wilson*, or *JP ‘243* provide score lines therein, and none of these cited references provide insert score lines that are aligned with inner and outer carton layer score lines as would be required in any insert added to the carton of *Brown* (The Examiner in one instance improperly references *Wilson* as providing “foldlines in the insert using perforations” since *Wilson* does not appear to support this reference). Absent a teaching or suggestion to provide score lines in the insert, modifying *Brown* by adding an insert as proposed by the Examiner would not allow the handles of *Brown* to concertina as intended, and would, in fact, interfere with the operation of the *Brown* concertina action. Further, even if score lines were provided by a reference, a teaching or suggestion to align or register such insert score lines is not provided in *Brown* or the other cited references. Thus, since modifying *Brown* as proposed by the Examiner would render *Brown* unsatisfactory for its intended purpose (providing a breakaway handhold), the combinations could not, and would not, be made as proposed. (See MPEP 2143.01(v)).

**C. No motivation exists to combine the art as proposed.**

A person of ordinary skill in the art viewing *Brown*, or even viewing all the cited art as a whole as appears to be the basis of the obviousness rejections by the Examiner, would not be

motivated to modify *Brown* to reach the claimed invention without using the present disclosure as motivation, which would be impermissible hindsight. The cited references entirely fail to provide a teaching or suggestion to provide a carton or blank as claimed, i.e. with three layers of paperboard between the first top fold line and the first handle aperture and an insert in alignment with the handle aperture. *Brown*, *Wilson*, *Reeser*, *Negelen*, and *JP '243* provide cartons with specific features. None of these references suggesting modification of the specific carton features or motivation to combine such disparate teachings to reach the claimed invention. The Examiner's only statements in this regard are at pages 2-3 of the Final Office Action:

It would have been obvious to provide reinforcement to the end wall handle apertures in *Brown et al* with an insert or inserts as taught by *Wilson* and to form the insert or inserts as a separate blank as taught by either *Sutherland et al* or *Skolik et al* as a matter of combining the elements according to known methods to yield the predictable results. See *KSR Int'l Col. V. Teleflex Inc.*, 127 S.Ct. 1727, 1742; 82 USPQ2d 1385, 1396 (2007). It would further have been obvious to maintain the partial handle apertures in the end panel flaps 25 and 27 in modified *Brown et al* in view of the teaching in either *Negelen* or *Reeser* as a way of forming a three ply handle structure to reinforce the handle.

However, there is no "known method" for forming a three-ply handle in the *Brown* structure. Since *Brown* cannot be modified as proposed without destroying the functionality intended, the Examiner's reasoning that the elements would be combined "according to known methods to yield the predictable results" lacks support in *Brown* as such modification is not predictable, as discussed above, and does not yield predictable results. Thus, the Examiner continues to fail to make a prima facie case of obviousness and rejections based upon such proposed combinations should be withdrawn. Accordingly, the rejections of claims 36-39, 41, and 42 should be withdrawn.

3. **The rejection of claims 9, 16, and 43 as being unpatentable over the prior art as applied to claims 8, 15, and 42, respectively, and further in view of *Sherman* (U.S. Patent No. 3,166,229), under 35 U.S.C. § 103(a) should be withdrawn.**

The rejection of claims 9, 16, and 43 based on the proposed combination of the prior art as applied to claims 8, 15, and 42 and further in view of *Sherman* should be withdrawn since *Sherman* fails to make up for the inadequacies of *Brown*, or its combination with the other proposed art, addressed above. Specifically, *Sherman* fails to provide a teaching or suggestion for modifying *Brown* by adding an insert, fails to teach an insert with score lines, and fails to teach aligning insert score lines with score lines in the interior layer and exterior layer. Accordingly, the rejection of claims 9, 16, and 43 based on the combination of these references should be withdrawn.

4. **The rejection of claims 10, 11, 17-20, and 44-45 as being unpatentable over the prior art as applied to claims 9, 16, and 43, and further in view of *Gilchrist* (U.S. Patent No. 3,533,549), under 35 U.S.C. § 103(a) should be withdrawn.**

The rejection of claims 10, 11, 17-20, and 44-45 based on the proposed combination of the prior art as applied to claim 9, 16, and 43 and further in view of *Gilchrist* should be withdrawn since *Gilchrist* fails to make up for the inadequacies of *Brown*, or its combination with the other proposed art, addressed above. Specifically, *Gilchrist* fails to provide a teaching or suggestion for modifying *Brown* by adding an insert, fails to teach an insert with score lines, and fails to teach aligning insert score lines with score lines in the interior layer and exterior layer. Accordingly, the rejections of claims 10, 11, 17-20, and 44-45 based on the combination of these references should be withdrawn.

**CONCLUSION**

For the foregoing reasons, the subject matter of the appealed claims would not have been obvious to one of ordinary skill in the art over the various combinations of references applied by the Examiner in the final rejection. It is therefore respectfully requested that the final rejection of claims 1-8, 12-13, 15-16, and 19-23 be reversed. The Commissioner is authorized to charge any fees that may be required for consideration of this Appeal Brief to Deposit Account No. 09-0528.

Respectfully submitted,

1/6/10  
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**CLAIMS APPENDIX**

4. A paperboard carton with a first end and a second end for carrying a plurality of containers, the carton comprising:

(a) a bottom panel, top panel, a first side panel attached to the top panel by a first fold line, and a second side panel attached to the top panel by a second fold line, the first end of the carton being closed by a first top end flap attached to the top panel along a first top end fold line, a first side end flap foldably attached to the first side panel, a second side end flap foldably attached to the second side panel, a first bottom end flap foldably attached to the bottom panel, with means for securing the first top end flap, the first side end flap, the second side end flap, and the first bottom end flap at the first end of the carton in the closed position, the second end of the carton being closed by a second top end flap attached to the top panel by a second top end fold line, a third side end flap foldably attached to the first side panel, a fourth side end flap foldably attached to the second side panel, a second bottom end flap foldably attached to the bottom panel, with means for securing the second top end flap, the third side end flap, the fourth side end flap, and the second bottom end flap at the second end of the carton in the closed position;

(b) said carton having a first handle aperture in the first top end flap and a second handle aperture in the second top end flap for carrying the carton when loaded with containers with the carton secured in the closed position, the first side end flap having a first side end aperture sufficiently aligned with the first handle aperture in said first top end flap so that a person's hand can be extended through the first handle aperture in said first top end flap and said first side end aperture in the first side end flap and the carton being defined with the third side end flap having a third side end aperture sufficiently aligned with the second handle aperture in said second top end flap so that a person's hand can be extended through the second handle

aperture in said second top end flap and the third side end aperture in the second side end flap;  
and

(c) said carton having a paperboard insert which is secured to at least one of the first top end flap and the first side end flap on the first end of the carton and which is secured to at least one of the second top end flap and the third side end flap on the second end of the carton, said insert having a first insert aperture that is sufficiently aligned with the first handle aperture in said first top end flap and the first side end aperture in said first side end flap so that a person's hand can be inserted through the first handle aperture, the first side end aperture, and the first insert aperture when the carton is secured in the closed position and having a second insert aperture that is sufficiently aligned with the second handle aperture in said second top end flap and the third side end aperture in said second side end flap so that a person's hand can be inserted through the second handle aperture, the third side end aperture, and the second insert aperture when the carton is secured in the closed position, said paperboard insert and said first side end flap reinforcing the first top end flap to form three layers of paperboard between the first top end fold line and the first handle aperture and said paperboard insert and said third side end flap reinforcing the second top end flap to form three layers of paperboard between the second top end fold line and the second handle aperture, to preserve the integrity of said first handle aperture and said second handle aperture, respectively, when the carton is loaded with the plurality of containers;

wherein the insert is secured by securing means to the first side end flap on the first end of the carton and to the third side end flap on the second end of the carton.

5. A paperboard carton with a first end and a second end for carrying a plurality of containers, the carton comprising:

(a) a bottom panel, top panel, a first side panel attached to the top panel by a first fold line, and a second side panel attached to the top panel by a second fold line, the first end of the carton being closed by a first top end flap attached to the top panel along a first top end fold line, a first side end flap foldably attached to the first side panel, a second side end flap foldably attached to the second side panel, a first bottom end flap foldably attached to the bottom panel, with means for securing the first top end flap, the first side end flap, the second side end flap, and the first bottom end flap at the first end of the carton in the closed position, the second end of the carton being closed by a second top end flap attached to the top panel by a second top end fold line, a third side end flap foldably attached to the first side panel, a fourth side end flap foldably attached to the second side panel, a second bottom end flap foldably attached to the bottom panel, with means for securing the second top end flap, the third side end flap, the fourth side end flap, and the second bottom end flap at the second end of the carton in the closed position;

(b) said carton having a first handle aperture in the first top end flap and a second handle aperture in the second top end flap for carrying the carton when loaded with containers with the carton secured in the closed position, the first side end flap having a first side end aperture sufficiently aligned with the first handle aperture in said first top end flap so that a person's hand can be extended through the first handle aperture in said first top end flap and said first side end aperture in the first side end flap and the carton being defined with the third side end flap having a third side end aperture sufficiently aligned with the second handle aperture in said second top end flap so that a person's hand can be extended through the second handle



aperture in said second top end flap and the third side end aperture in the second side end flap;  
and

(c) said carton having a paperboard insert which is secured to the first top end flap and the first side end flap on the first end of the carton and which is secured to the second top end flap and the third side end flap on the second end of the carton, said insert having a first insert aperture that is sufficiently aligned with the first handle aperture in said first top end flap and the first side end aperture in said first side end flap so that a person's hand can be inserted through the first handle aperture, the first side end aperture, and the first insert aperture when the carton is secured in the closed position and having a second insert aperture that is sufficiently aligned with the second handle aperture in said top end flap and the third side end aperture in said second side end flap so that a person's hand can be inserted through the second handle aperture, the third side end aperture, and the second insert aperture when the carton is secured in the closed position, said paperboard insert and said first side end flap reinforcing the first top end flap to form three layers of paperboard between the first top end fold line and the first handle aperture and said paperboard insert and said third side end flap reinforcing the second top end flap to form three layers of paperboard between the second top end fold line and the second handle aperture, to preserve the integrity of said first handle aperture and said second handle aperture, respectively, when the carton is loaded with the plurality of containers;

wherein the paperboard insert is secured by securing means to the first top end flap and to the second top end flap.

7. The carton of claim 5 in which the first top end flap has an inside and outside surface and the second top end flap has an inside and outside surface and the paperboard insert is secured to the inside surface of the first top end flap and the second top end flap.

8. The carton of claim 7 in which the first insert aperture and the second insert aperture are larger than the corresponding first handle aperture and the second handle aperture in the first top end flap and in the second top end flap.

9. The carton of claim 8 which has interconnected tear lines in the top panel which extend into the first side panel and the second side panel to form a dispenser flap which when torn open allows the removal of containers from the carton.

10. The carton of claim 9 in which the interconnected tear lines extend into the first side panel and the second side panel and are interconnected in said top panel to form two dispenser flaps.

11. The carton of claim 10 in which a finger flap is formed by a tear line adjacent to a location in the interconnected tear lines that forms two flaps so that when the finger flap is opened the interconnected tear lines can be torn opening either or both dispenser flaps so containers can be removed from the carton.

12. The carton of claim 5 in which the insert extends across the top panel from the first top end flap to the second top end flap.

13. The carton of claim 12 in which the insert apertures are larger than the corresponding first handle aperture and the second handle aperture in the first top end flap and in the second top end flap.

14. The carton of claim 13 in which the insert has a fold line that is adjacent the fold line between the top panel and the first top end flap and the second top end flap with each fold line in said insert being interspersed with a plurality of apertures to facilitate closing and securing the first top end flap on the first end of the carton together and the second top end flap on the second end of the carton.

15. The carton of claim 14 in which the first top end flap and the second top end flap and the top panel have an inside and outside surface and the insert is secured to the inside surfaces of the top panel and the first top end flap and the second top end flap.

16. The carton of claim 15 which has interconnected tear lines in the top panel for forming at least one dispenser flap for removing containers from the carton when the flap is opened with the insert having corresponding interconnected tear lines that are located adjacent the interconnected tear lines in the top panel for forming an adjacent flap that can be opened with the dispenser flap in the top panel.

17. The carton of claim 14 which has interconnected tear lines in the top panel for forming a first dispenser flap and a second dispenser flap for removing containers from the

carton when opened, with the insert having corresponding interconnected tear lines located adjacent the interconnected tear lines in the top panel for forming a first insert flap and a second insert flap which are respectively adjacent the first dispenser flap and the second dispenser flap in the top panel, with the first insert flap opening when a dispenser flap in the top panel is opened and with the second insert flap opening when the second dispenser flap in the top panel is opened.

18. The carton of claim 17 which has a finger flap formed by a tear line in the top panel adjacent the interconnected tear lines and a corresponding opening in the insert that is at least as large as the finger flap in the top panel.

19. The carton of claim 18 in which the insert has a plurality of subsidiary tear lines parallel at least a substantial portion of the interconnected tear lines in the insert so that the combination of the interconnected tear lines and subsidiary tear lines are located in relation to the dispenser flaps in the top panel so as not to impede the opening of the first insert flap or the second insert flap when the adjacent dispenser flap in the top panel is opened.

20. The carton of claim 18 in which the insert has a plurality of subsidiary tear lines located parallel to a substantial portion of the interconnected tear lines in the insert so as to permit the tearing of the first insert flap or the second insert flap so that it is capable of being torn open and extended inside the opening formed by tearing and opening the respective adjacent dispenser flap in the top panel, said subsidiary tear lines being located so as to compensate for any slight misalignment when the insert is located and secured to the top panel.

36. A paperboard carton with a first end and a second end for carrying a plurality of containers, the carton comprising:

(a) a bottom panel, top panel, a first side panel attached to the top panel by a first fold line, and a second side panel attached to the top panel by a second fold line, the first end of the carton being closed by a first top end flap attached to the top panel along a first top end fold line, a first side end flap foldably attached to the first side panel, a second side end flap foldably attached to the second side panel, a first bottom end flap foldably attached to the bottom panel, with means for securing the first top end flap, the first side end flap, the second side end flap, and the first bottom end flap at the first end of the carton in the closed position, the second end of the carton being closed by a second top end flap attached to the top panel by a second top end fold line, a third side end flap foldably attached to the first side panel, a fourth side end flap foldably attached to the second side panel, a second bottom end flap foldably attached to the bottom panel, with means for securing the second top end flap, the third side end flap, the fourth side end flap, and the second bottom end flap at the second end of the carton in the closed position;

(b) said carton having a first handle aperture in the first top end flap and a second handle aperture in the second top end flap for carrying the carton when loaded with containers with the carton secured in the closed position, the first side end flap having a first side end aperture sufficiently aligned with the first handle aperture in said first top end flap so that a person's hand can be extended through the first handle aperture in said first top end flap and said first side end aperture in the first side end flap and the carton being defined with the third side end flap having a third side end aperture sufficiently aligned with the second handle aperture in said second top end flap so that a person's hand can be extended through the second handle

aperture in said second top end flap and the third side end aperture in the second side end flap;  
and

(c) said carton having a first paperboard insert and a second paperboard insert, the first paperboard insert being secured to at least one of the (i) first top end flap and (ii) the first side end flap and the second paperboard insert being secured to at least one of the (i) second top end flap and (ii) the third side end flap; the first end having a first handle aperture in said first top end flap and the second end of the carton having a second handle aperture in said second top end flap, said first paperboard insert having a first insert aperture that is sufficiently aligned with the first handle aperture in said first top end flap and the first side end aperture in said first side end flap so that a person's hand can be inserted through the first handle aperture, the first side end aperture, and the first insert aperture when the carton is secured in the closed position and the second paperboard insert having a second insert aperture that is sufficiently aligned with the second handle aperture in said second top end flap and the third side end aperture in said second side end flap so that a person's hand can be inserted through the second handle aperture, the second side end aperture, and the third insert aperture when the carton is secured in the closed position, said first paperboard insert and said first side end flap reinforcing the first top end flap to form three layers of paperboard between the first top end fold line and the first handle aperture and the second paperboard insert and said third side end flap reinforcing the second top end flap to form three layers of paperboard between the second top end fold line and the second handle aperture to preserve the integrity of said first handle aperture and said second handle aperture, respectively, when the carton is loaded with the plurality of containers.

37. The carton of claim 36 in which the means for securing is glue.

38. The carton of claim 36 in which the first and the second inserts are secured respectively to the first side end flap on the first end and to the second side end flap on the second end of the carton.

39. The carton of claim 36 in which the first paperboard insert and the second paperboard insert are secured respectively to the first top end flap and the second top end flap.

41. The carton of claim 36 in which the first top end flap has an inside and outside surface and the second top end flap has an inside and outside surface and the first paperboard insert and the second paperboard insert are secured to the inside surface of the first top end flap and the second top end flap, respectively.

42. The carton of claim 41 in which the first insert aperture and the second insert aperture are larger than the corresponding first handle aperture and the second handle aperture in the first top end flap and in the second top end flap.

43. The carton of claim 42 which has interconnected tear lines in the top panel which extend into the first side panel and the second side panel to form a dispenser flap which when torn open allows the removal of containers from the carton.

44. The carton of claim 43 in which the interconnected tear lines extend into the first side panel and the second side panel and are interconnected in said top panel to form two dispenser flaps.

45. The carton of claim 44 in which a finger flap is formed by a tear line adjacent to a location in the interconnected tear lines that forms two flaps so that when the finger flap is opened the interconnected tear lines can be torn opening either or both dispenser flaps so containers can be removed from the carton.

46. The carton of claim 36 in which the first and second inserts extend across the top panel from the first top end flap to the second top end flap.



**EVIDENCE APPENDIX**

None.

**RELATED PROCEEDINGS APPENDIX**

None.